

# **U.S. Department of Education**

## **Race to the Top Assessment Program**

### **Summary of Conflict of Interest Policy and Procedures**

#### **Overview**

At the U.S. Department of Education (Department), peer reviewers for discretionary grants programs serve as contractors and are not considered Department employees. Therefore, peer reviewers are not subject to the same conflict of interest laws and regulations applicable to Executive branch employees. The Department has policy and procedures that address peer reviewer conflicts of interest which are outlined in Section 3.5 of the Department's "Handbook for Discretionary Grant Process." (See ACS Handbook OS-01 (1/26/09).) The Handbook provides a framework for identifying and mitigating peer reviewer conflicts of interest, which is the basis for the plan we developed to effectively address peer reviewer conflicts of interest in the Race to the Top Assessment competition. These policies and procedures are designed to enable the Department to have expert peer reviewers while, at the same time, ensuring a high level of objectivity and integrity in the review.

The purpose of this section is to describe the process that the Department used to implement this policy and ensure that the Race to the Top Assessment competition peer review process is conducted in an objective manner.

#### **Identifying Potential Conflicts of Interest**

A multi-step process was used to identify, evaluate and manage peer reviewer conflicts of interest for the Race to the Top Assessment competition. First, the Department made an initial determination that no individual who has a "direct conflict of interest," as defined below, or who is a current employee of a State educational agency (SEA) would be permitted to serve as a peer reviewer.<sup>1</sup>

All peer reviewer applicants were asked to complete a conflict of interest survey to gather relevant information to determine other possible conflicts of interest. The conflict of interest survey was developed by program staff and staff from the Ethics Division of the Office of General Counsel. In addition, program staff asked a Department contractor to run a targeted internet search on each of the peer reviewer nominees.

Staff of the Ethics Division of the Office of General Counsel reviewed survey responses, resumes, and the results of the internet searches and, in deliberations with the program staff and program attorneys, determined the nature and extent of any "indirect conflicts of interest," as defined below, or other information that raised questions about a potential peer reviewer candidate's objectivity. In many cases, follow-up interviews were conducted to gain additional information in response to questions raised during this review.

The Department then made an initial determination regarding whether the peer reviewer applicants had an "indirect conflict of interest," or other interests that might affect objectivity. Those individuals with neither direct nor indirect conflicts of interest were considered eligible peer reviewers.

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<sup>1</sup> Individuals with this employment relationship were eliminated from consideration because all SEAs are potential applicants; thus all have a direct interest in the outcome of the competition.

The remaining peer reviewer candidates fell into one of the following categories:

- 1) Individuals with an “indirect conflict of interest” who could be granted a waiver that permitted them to review subject to certain conditions;
- 2) Individuals with an “indirect conflict of interest” who could not be granted a waiver and who may only serve if the States that give rise to the conflict do not apply as part of a consortium for a Race to the Top Assessment grant; or
- 3) Individuals with no “indirect conflict of interest,” but for whom there was other information that required disqualification from reviewing certain State applications in order to avoid the appearance of a conflict of interest.

### **Direct Conflicts of Interest**

As noted above, no individual who was determined to have a “direct conflict of interest” was permitted to serve as a peer reviewer in the Race to the Top Assessment competition. An individual was considered to have a “direct conflict of interest” if:

- 1) The individual’s financial interests were affected by the outcome of the Race to the Top Assessment competition;
- 2) An individual helped prepare a Race to the Top Assessment application, even if he or she had no financial interest in the outcome of that application; or
- 3) An individual had agreed to serve as an employee or consultant, or otherwise provide assistance or advice, on any project for which funding was being sought in any Race to the Top Assessment application, or had been offered the opportunity to do so and had not yet accepted or declined.

### **Indirect Conflicts of Interest**

Individuals for whom an “indirect conflict of interest” was identified were not permitted to serve as a peer reviewer unless a waiver was issued.

An individual was considered to have an “indirect conflict of interest” if any of the following had a personal financial interest in the outcome of the competition:

- 1) The reviewer’s spouse, his or her child, a member of his or her household, or any relative with whom he or she has a close relationship;
- 2) Any employer the reviewer has served within the last 12 months; a business partner; an organization the reviewer has served as an officer, director, or trustee within the last 12 months; an organization that he or she has acted as a consultant; or an organization that he or she serves as an active volunteer;
- 3) Any person or organization with whom the reviewer is negotiating for, or has an arrangement concerning, future employment; or

- 4) Any professional associate – including any colleague, scientific mentor, or student – with whom the reviewer is currently conducting research or other professional activities, or with whom the reviewer has conducted such activities within the last 12 months.

It is the Department's policy that all "indirect conflicts of interest" must be considered on a case-by-case basis. A waiver may be granted when a determination is made that an individual's financial interest is not so substantial as to affect the integrity of his or her services and, given all relevant facts, the Department's need for the individual reviewer's services outweighs the possibility that a reasonable person would question the reviewer's impartiality. An example of an indirect conflict of interest for the Race to the Top Assessment competition includes an individual who currently, or recently (within the last 12 months), worked as a consultant (not as an employee) on projects with an SEA that are unrelated to the Race to the Top Assessment competition.

### **Appearance of a Conflict of Interest – Other Circumstances**

Reviewers were also asked to identify any other circumstance that might cause someone to question his/her ability or objectivity in serving as a reviewer in this competition. First, through the review process described above, the Department identified some circumstances that are not considered either a direct or indirect conflict of interest, but for which peer reviewers were otherwise, out of an abundance of caution, disqualified from reviewing certain applications. These situations were considered on a case-by-case basis. For example, a potential reviewer might have been disqualified if the reviewer's employer currently, or within the last year, has provided services to an SEA, but the reviewer did not personally provide such services, and the services were unrelated to Race to the Top Assessment.

Another example of other circumstances include individuals qualified to serve as peer reviewers in this competition who also serve on one or more State technical advisory committees (TACs) on assessments for States that are not "active" States in any application. The Department has determined that it is critical to have individuals with State TAC experience on the peer review panel. However, an individual who serves currently, or has served recently, on a TAC for an "active" State – including a lead or governing state -- has an indirect conflict of interest for which it was determined a waiver would not be appropriate. We anticipate that some individuals serve on TACs for States that will be included as part of a consortium in one or more applications but are not considered "active." In this context a state is not considered active if it has a speculative, rather than a direct and predictable, financial interest in a Race to the Top Assessment application. Although serving on a TAC for a State that is not an active State in an application may result in an appearance of a conflict of interest, it has been determined that the Department's need for individuals with this kind of expertise outweighs any possible appearance problem. This is particularly true given the overall design of the review process, as described below.

Additionally, the Department anticipates that non-profit organizations, for-profit companies, and other organizations that are not eligible applicants in the Race to the Top Assessment competition may nonetheless be mentioned in an application. Applicants were specifically discouraged from naming potential contractors, except with respect to a proposed project management partner, for their Race to the Top Assessment projects. Peer reviewers will be instructed to advise program staff immediately if they discover that a non-profit, for-profit, or other organization with which they had a relationship (such as employment, board membership or stock ownership) is mentioned in any application they are assigned to review so that the identified relationship can be evaluated for conflicts of interest and, where necessary, an appropriate mitigation strategy can be implemented.

We note that the Department specifically considered whether there is an appearance of a conflict of interest for applicants who work for or with testing and publishing companies. We do not anticipate that

testing and publishing companies will be mentioned as partner in any application. However we recognize that these companies may have an interest in the outcome of this competition. It was determined that generally an applicant who has worked on a consulting basis with a testing or publishing company on one or more discrete projects unrelated to the Race to the Top Assessment program or State mathematics or English language Arts assessments may serve as a reviewer in this competition. Each applicant was carefully screened and each circumstance involving a testing or publishing company was evaluated on a case-by-case basis.

### **Design of the Competition**

Certain aspects of the competition design for Race to the Top Assessment helped mitigate the appearance that any individual peer reviewer was not impartial. Specifically:

- 1) Each application is reviewed by nine reviewers.
- 2) There is a detailed scoring rubric that peer reviewers are required to use to score an application.
- 3) Department staff serves as panel monitors and ensure there is a full and in-depth discussion of the scores.
- 4) Both before and during the review process, reviewers are reminded that throughout the course of the review, they are required to identify any circumstances that might cause a reasonable person to question a reviewer's impartiality in serving as a reviewer for the Race to the Top Assessment competition. Similarly, Program officials receive reminders that they need to identify any circumstances that might cause a reasonable person to question their impartiality as program staff for the purposes of the competition and communicate those concerns to appropriate leaders.

### **Peer Reviewers Attest to Conflicts Status**

Each individual who serves as a peer reviewer for the Race to the Top Assessment competition will be required to review all survey responses and other information they have provided in connection with the conflict of interest procedure, and attest to their conflicts status in a reviewer agreement .